S.B. CIVIL WRIT PETITION NO.2802/2005

Smt. Dhanni Vs. State of Rajasthan and others.

Date : 12.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Ranjeet Joshi, for the petitioner.

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Heard learned counsel for the petitioner.

According to learned counsel for the petitioner, the petitioner is an elected ward member from Ward NO.11 of Village Maheshpura, Panchayat Circle Amla of Panchayat Samiti, Mundawa for which a certificate has been issued by the reporting officer on 4.2.2005. The petitioner was served with a notice for election of Up-Sarpanch, copy of which is placed on record as Annex.2, which is also dated 4.2.2005.

According to learned counsel for the petitioner, the petitioner was prevented from casting vote by Returning Officer. It is also submitted that the petitioner is also prevented from attending the meetings of the Panchayat. When the petitioner demanded copies of voters who casted vote by submitting application Annex.3, copies were denied by saying that in view of Rules 53 and 47 of the Rajasthan Panchayati Raj (Election) Rules, 1994 (for short “the Rules of 1994”), these copies cannot be given without there being

any order of the Court. The petitioner's another application Annex.4 for obtaining copies was also denied on the same ground. The petitioner has, therefore, preferred this writ petition seeking direction against the respondents to allow the petitioner to participate in the meeting of Gram Panchayat and action may be taken against the returning officer who prevented the petitioner from participating in the election of Up-Sarpanch and allowed other person to cast vote.

It appears from the facts mentioned above itself that the petitioner has raised disputed question of facts like whether the petitioner was prevented by the returning officer or any other person from taking part in the election of Up-Sarpanch or the petitioner herself did not took part in the election. This Court cannot allow oral evidence to prove the facts as pleaded by the petitioner nor there can be any enquiry on these disputed questions of facts here in writ jurisdiction.

So far as preventing the petitioner from casting vote in the election of Up-Sarpanch is concerned, the petitioner has an alternative remedy of challenging the election by initiating proper proceedings which the petitioner has not initiated yet where all the facts could have been enquired into.

Sub-Rule 2 of Rule 53 of the Rules of 1994 clearly provides that no copies of the documents mentioned in sub-rule 2 shall be allowed even for inspection nor they can be

produced except under the orders of the Court of competent jurisdiction. The petitioner could have challenged the election of Up-Sarpanch and could have moved an application for summoning of the documents upon which the Court could have passed the appropriate order but this Court cannot hold enquiry after summoning the documents from the returning officer or from the other officers so as to allow the inspection of the documents to the petitioner when the election of Up-Sarpanch is not under challenge.

The allegations which are levelled against the respondents no.5 and 6 are also bald allegations and not supported by any evidence apart from the fact that the petitioner has not taken any action against the guilty persons by filing complaint before the higher authorities or by filing F.I.R. before the police where the matter could have been enquired into and more than three months have already passed after the event.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya